

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
2 LAW OFFICES OF DONALD KILMER
3 1645 Willow Street, Suite 150
4 San Jose, California 95125
5 Voice: (408) 264-8489
6 Fax: (408) 264-8487
7 E-Mail: Don@DKLawOffice.com

5 || Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

10 MARK AARON HAYNIE, THE
11 CALGUNS FOUNDATION, INC.,
12 and THE SECOND AMENDMENT
FOUNDATION, INC..

Plaintiffs,

14 VS

KAMALA HARRIS, Attorney General
of California (in her official capacity)
and CALIFORNIA DEPARTMENT
OF JUSTICE, and DOES 1 TO 20.

Defendants.

Case No.: CV 10 1255 SI

**DECLARATION OF GENE
HOFFMAN OPPOSING
DEFENDANTS' MOTION TO
DISMISS**

Date: June 10, 2011
Time: 9:00 a.m.
Courtroom: 10
Judge: Honorable Susan Illston
Trial Date: N/A
Action Filed: March 25, 2010

22 I, GENE HOFFMAN, declare as follows:

- 23 1. I am the Chairman and co-founder of The Calguns Foundation (CGF) a party
24 in this action.

25 2. CGF (www.calgunsfoundation.org) is a 501(c)3 nonprofit organization serving
26 its members by providing Second Amendment-related education, strategic
27 litigation and defending innocent California gun owners from improper
28 prosecution

1 3. CGF works to educate the general public and the government in an ongoing
2 effort to protect the rights of individuals to acquire, own and lawfully use
3 firearms in California.

4 4. The formation of CGF was partially inspired by a desire to counteract a
5 disinformation campaign orchestrated by the California Department of
6 Justice (DOJ) in response to gun owners realizing the implications of the
7 California Supreme Court Decision in *Harrot v. County of Kings* and the
8 expiration of the Federal Assault Weapons laws.

9 5. In late 2005, various individuals and licensed gun stores began importing
10 into California AR pattern rifles and the receivers for them.

11 6. In response to inquiries about the legality of importing and possessing
12 certain AR and AK pattern rifles and receivers, DOJ began replying in their
13 official letters that while THEY were of the opinion that these rifles were
14 legal, local District Attorneys might disagree and prosecute anyway. True
15 and correct copies of these letter are attached as Exhibit A and they all follow
16 a similar pattern of declaring a certain gun part (receiver) legal to import
17 into California and then warning the recipient that California's 58 District
18 Attorneys may have a different opinion that could result in prosecution. See:
19 i. December 12, 2005 letter from DOJ to Ms. Amanda Star
20 rendering an opinion about the legality of a Stag-15 Lower
21 receiver but warning that local prosecutors may disagree and
22 prosecute accordingly.
23 ii. January 18, 2006 letter from DOJ to BST Guns also opining out
24 the legality of firearms, but giving the same warning the 58
25 county prosecutors could potentially prosecute anyway.
26 iii. December 28, 2005 letter from DOJ to Matthew Masuda. Same
27 pattern.
28 iv. December 27, 2005 letter from DOJ to Christopher Kjellberg.

- 1 Same pattern.
- 2 v. December 27, 2005 letter from DOJ to Kirk Haley. Same
- 3 pattern.
- 4 vi. December 28, 2005 letter from DOJ to Mark Mitzel. Same
- 5 pattern.
- 6 vii. December 28, 2005 letter from DOJ to Jason Paige. Same
- 7 pattern.
- 8 7. From February to May 2006, the California Department of Justice issued a
- 9 series of memorandums that were obtained as part of a California Public
- 10 Records Request. A true and correct copy of that disclosure is Attached as
- 11 Exhibit B. The memorandums are remarkable because:
- 12 a. The Department of Justice made changes to the various versions of
- 13 this memorandum due to Jason Davis, then an attorney for the
- 14 National Rifle Association, pointing out legal flaws in the various
- 15 iterations.
- 16 b. In all versions of the memorandum, the Department of Justice directly
- 17 conflicted the previously published Assault Weapons Information
- 18 Guide by stating that owners of a firearm with features had to,
- 19 “permanently alter the firearm so that it cannot accept a detachable
- 20 magazine.” “Permanent alteration” is not required in the Penal Code,
- 21 the Assault Weapons Information Guide, or the then existing
- 22 California Code of Regulations 11 C.C.R. 5469.
- 23 8. On or about May 10, 2006, DOJ counsel Alison Merrilees informed a member
- 24 of the public that the DOJ wished to create a test case, “[w]e are eagerly
- 25 awaiting a test case on this, because we think we’ll win.” A true and correct
- 26 copy of the email that was obtained as part of a Public Records Act request is
- 27 attached as Exhibit C.
- 28 9. In May 2006, DOJ issued an internal memo to phone staff that stated, “It is

1 DOJ's opinion that under current law, a semiautomatic centerfire rifle that is
 2 modified to be temporarily incapable of accepting a detachable magazine, but
 3 can be restored to accommodate a detachable magazines, is an assault
 4 weapons if it has any of the features listed in §12276.1(a)(1)," and
 5 "Individuals who alter a firearm designed and intended to accept a
 6 detachable magazine in an attempt to make it incapable of accepting a
 7 detachable magazine do so at their legal peril," stating further, "[w]hether or
 8 not such a firearm remains capable of accepting a detachable magazine is a
 9 question for law enforcement agencies, district attorneys, and ultimately
 10 juries of twelve persons, not the California Department of Justice." A copy of
 11 this memorandum was obtained as part of a Public Records Act Request and
 12 is attached as Exhibit D.

13 10. On or about June 6, 2006, DOJ issued a Notice of Proposed Rulemaking. The
 14 proposed amendment would have "define[d] a sixth term, "capacity to accept
 15 a detachable magazine", as meaning "capable of accommodating a detachable
 16 magazine, but shall not be construed to include a firearm that has been
 17 permanently altered so that it cannot accommodate a detachable magazine."
 18 A true and correct copy of the notice is attached as Exhibit E.

19 11. On or about November 1, 2006, DOJ issued a "Text of Modified Regulations"
 20 The updated text attempted to define "detachable magazine" as "currently
 21 able to receive a detachable magazine or readily modifiable to receive a
 22 detachable magazine" and had other "permanency" requirements. A true and
 23 correct copy of the notice is attached as Exhibit F.

24 12. I allege on information and belief, DOJ did not submit the Modified
 25 Regulations to the Office of Administrative Law ("OAL") and thus the 2006
 26 Rulemaking did not take effect.

27 13. On or about July 11, 2007, I petitioned the OAL to have them find that the
 28 continued publication of the "Important Notice" Memorandum after the 2006

- 1 Rulemaking that was not submitted to OAL was an “Underground
 2 Regulation.” See Exhibit G.
- 3 14. On or about September 11, 2007, OAL accepted my petition. See Exhibit H.
 4 15. On or about September 21, 2007, OAL suspended it’s review as DOJ issued a
 5 certification on or about September 20, 2007 that stated, “[DOJ] reserves the
 6 right to interpret the law in any case-specific adjudication, as authorized in
 7 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,572.” A
 8 true and correct copy of the letter from the OAL along with DOJ’s
 9 certification is attached as Exhibit I.
- 10 16. The reservation in the certification of September 20, 2007 leads to
 11 uncertainty over whether the DOJ would take the position that permanence
 12 was required for modifications to a firearm so that the firearm would not
 13 have “the capacity to accept a detachable magazine.”
- 14 17. On or about September 29, 2008, DOJ responded to a letter inquiry about the
 15 legality of selling a semiautomatic center fire rifle with an alternate version
 16 of the bullet button colloquially known as the Prince-50 kit. DOJ stated:
 17 “Since there are no statutes, case law, or regulations concerning
 18 whether a rifle that is loaded with a fixed, removeable magazine can
 19 also be considered to have the ‘capacity to accept a detachable
 20 magazine,’ we are unable to declare rifles configured with the ‘Prince
 21 50 Kit’ or ‘bullet button’ to be legal or illegal.”
 22 See Exhibit J, with special attention to Attachment A, which is the letter
 23 dated September 29, 2008.
- 24 18. On or about November 3, 2008, DOJ replied to Kern County DA Edward
 25 Jagels:
 26 “Since there are no statutes, case law, or regulations concerning
 27 whether a rifle that is loaded with a fixed, removeable magazine
 28 can also be considered to have the ‘capacity to accept a

1 detachable magazine,' we are unable to declare rifles configured
 2 with the 'Prince 50 Kit' or 'bullet button' to be legal or illegal."

3 A true and correct copy of this letter is attached as Exhibit K. The letter is
 4 hard to read due to multiple copies. If discovery proceeds in this matter, I
 5 would expect to obtain a cleaner copy.

6 19. Now, not only is DOJ claiming it has no duty to issue a clarifying bulletin to
 7 the State's District Attorneys and Law Enforcement Community, on this
 8 issue; they have apparently engaged in a pattern of disinformation and
 9 confusion on the issue of whether a rifle fitted with a device that makes it
 10 incapable of accepting a detachable magazine is legal to own in California.
 11 In other words, it could be argued that DOJ's firearms division has a
 12 separate and distinct duty to clear up the confusion they have created,
 13 separate and apart from any constitutional, statutory and/or common law
 14 duty.

15 20. The Calguns Foundation has defended many incidents of law abiding gun
 16 owners and retailers whose firearms were either seized, the individual was
 17 arrested and/or charged with violating Assault Weapons Control Act.

- 18 a. In approximately April 2007 Matthew Corwin was arrested and
 19 charged with multiple violations of the AWCA. See People v. Matthew
 20 Corwin, Case No. GA069547, Los Angeles Superior Court.
- 21 b. In November 2008, John Crivello had a semiautomatic centerfire rifle
 22 with a bullet button seized from his home in Santa Cruz, California by
 23 the Santa Cruz Police Department. Counsel provided by CGF educated
 24 the Santa Cruz District Attorney's office. Counsel to CGF was advised
 25 that DOJ stated that it was unclear whether the bullet button was
 26 legal but that the District Attorney should file anyway. The District
 27 Attorney (ADA Dave Genochio and/or Charlie Baum) dropped charges
 28 and the firearm was returned to Mr. Crivello. CGF spent \$645.00

defending Mr. Crivello.

- c. On or about November 3, 2009, Deputy J. Finley of Orange County Sheriff's Department seized a bullet button equipped Stag Arms AR-15 style firearm from Stan Sanders. CGF counsel was engaged to explain the legality of the firearm to the Orange County Sheriff's Department and the firearm was subsequently returned to Mr. Sanders. The Orange County Training Bulletin was issued partially in response to this incident. CGF spent \$650.00 defending Mr. Sanders.
 - d. On or about March 30, 2010, Robert Wolf was arrested by the Riverside County Sheriff's Department for possession of a semiautomatic centerfire rifle with a "Prince 50 Kit." CGF counsel intervened and had the case dismissed on or about November 11, 2010 with the firearm subsequently returned to Mr. Wolf. CGF spent \$5975.00 defending Mr. Wolf.
 - e. In May of 2010, Brendan Richards was arrested, charged, and held in jail in Sonoma County for six days before he was released on bail for possession of a semiautomatic center-fire pistol with a bullet button. All charges were dropped on or about September 9, 2010. To date, CGF has spent \$11,224.86 defending Mr. Richards.¹
 - f. Confusion about the legality of semiautomatic centerfire rifle with a bullet buttons resulting from DOJ's misinformation continues. On or about March 29, 2011, the Cotati Police Department seized a semiautomatic center-fire rifle with a bullet button from Max Horowitz. The Cotati Police Department has forwarded a police report to the Sonoma County DA's office. CGF counsel has been retained to defend Mr. Horowitz.

¹ There is a federal civil rights case in the process of being filed and a Notice of Related case will be filed and an Administrative Motion to Relate will be filed shortly in this matter.

1 21. To my knowledge, the first time that the DOJ has ever come close to
2 admitting that a bullet button equipped semiautomatic center-fire rifle is
3 legal was upon the filing of the Memorandum of Points and Authorities in
4 Support of Motion to Dismiss, docket entry 26-1 in this case on or about May
5 6, 2011.

I declare under penalty of perjury under the laws of California and the
United States that the forgoing is true and correct and that this declaration was
executed in San Jose, CA on May 19, 2011.

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/s/

Gene Hoffman, Chairman of CGF, Inc.

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Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vc: 408/264-8489
Fx: 408/264-8487